

§ 26.25

the administrative action to determine whether it is supported by a preponderance of the evidence unless a different standard of proof is required by law or regulation. Each and every charge alleged by the Department need not be proven to support the administrative action. The hearing officer may modify or vacate the administrative action under review only upon a particularized finding of facts which justifies a deviation from the administrative action.

(b) *Closing of hearing.* At the discretion of the hearing officer, the closing of the record may be postponed in order to permit the admission of other evidence into the record. In the event further evidence is admitted, each party shall be given an opportunity to respond to such evidence.

(c) *Briefs.* Upon conclusion of the hearing, the hearing officer may request the parties to file proposed findings of fact and legal briefs. The hearing officer shall make a written determination and order based upon evidence and arguments presented by the parties. The determination shall be founded upon reliable and probative evidence. This determination and order shall be served upon all parties.

(d) *Bench decisions.* Where the parties agree and where appropriate in the judgment of the hearing officer, a bench decision will be issued.

(e) *Time period for issuance of decision.* The hearing officer shall endeavor to issue a determination within sixty days from the date of the closing of the record.

(f) *Finality of decision.* The determination and order shall be final unless a party timely appeals the decision and within forty days the Secretary decides to review the determination in accordance with § 26.25, or to have the determination reviewed by a designee.

SECRETARIAL REVIEW

§ 26.25 Review of determination of hearing officers.

(a) *Petition for review.* Any party may request review of the hearing officer's determination or order by filing a written petition for review with the Secretary within fifteen days of receipt of the hearing officer's determination or

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order. A petition for review may be granted or denied in the discretion of the Secretary or designee. This petition shall not exceed ten pages and shall specifically state the issues and basis upon which the party seeks review. This petition shall be served on all parties and the Secretary simultaneously, in accordance with § 26.15.

(b) *Briefs by opposing parties.* Opposing parties may submit briefs, not to exceed ten pages, opposing review. These briefs must be filed within fifteen days of the party's receipt of a petition for review.

(c) *Secretarial action.* Upon granting any petition for review, the Secretary or designee, may require further briefs. Secretarial review shall be limited to the factual record produced before the hearing officer. The Secretary, or designee, shall issue a written determination and shall serve it upon the parties and the hearing officer.

§ 26.26 Interlocutory rulings.

(a) *Interlocutory rulings by the hearing officer.* A party seeking review of an interlocutory ruling shall file a motion with the hearing officer within ten days of the ruling requesting certification of the ruling for review by the Secretary. Certification may be granted if the hearing officer believes that (1) it involves an important issue of law or policy as to which there is substantial ground for difference of opinion and (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(b) *Petition for review.* Any party may file a petition for review of an interlocutory ruling within ten days of the hearing officer's determination regarding certification.

(c) *Secretarial review.* The Secretary, or designee, shall review a certified ruling. The Secretary, or designee, has the discretion to grant or deny a petition for review from an uncertified ruling.

(d) *Continuation of hearing.* Unless otherwise ordered by the hearing officer or the Secretary, or designee, the hearing shall proceed pending the determination of any interlocutory appeal and the order or ruling of the hearing officer shall be effective pending review.